

Introduced by Senator Mendoza

February 19, 2016

An act to amend Sections 11106, 17060, and 27880 of, and to add Sections 27881 and 27882 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 1332, as introduced, Mendoza. Firearms.

Existing law requires the Attorney General to maintain a registry of all firearm owners consisting of the name, address, identification of, place of birth, complete telephone number, occupation, sex, description, and all legal names and aliases used by the owner of a particular firearm as listed on the Dealer's Record of Sale or other specified reports.

This bill would require the Department of Justice to modify its registration form so that both spouses or both domestic partners may register as the owners of the firearm and would require the department to maintain both names on the firearm's registry. The bill would make related findings and declarations and would require the Attorney General to submit a report to the Legislature on or before January 1, 2018, regarding joint registration of firearms, as specified.

Existing law also requires the Attorney General to maintain information regarding firearms from certain other reports pertaining to firearms transactions.

This bill would additionally require the Attorney General to maintain the information supplied to the Department of Justice in certain forms submitted by persons who take possession of a firearm pursuant to a specified exception to the general requirement that firearms transactions be completed through a licensed firearms dealer.

Existing law requires the loan of a firearm to be conducted through a licensed firearms dealer. Other existing law excepts from this

requirement certain loans of firearms between persons who are personally known to each other if certain criteria are met, including that the loan does not exceed 30 days. Existing law makes a violation of this requirement a crime.

This bill would instead make that provision applicable only when the loan does not exceed 10 days in duration. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The bill would also create additional exceptions to the dealer requirement for a loan of a firearm that occurs at the lender's residence or private property and for a loan in which the firearm is being stored in the receiver's residence or in an enclosed structure on the receiver's private property, if certain criteria are met.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11106 of the Penal Code is amended to
- 2 read:
- 3 11106. (a) (1) In order to assist in the investigation of crime,
- 4 the prosecution of civil actions by city attorneys pursuant to
- 5 paragraph (3) of subdivision (b), the arrest and prosecution of
- 6 criminals, and the recovery of lost, stolen, or found property, the
- 7 Attorney General shall keep and properly file a complete record
- 8 of all of the following:
- 9 (A) All copies of fingerprints.
- 10 (B) Copies of licenses to carry firearms issued pursuant to
- 11 Section 26150, 26155, 26170, or 26215.
- 12 (C) Information reported to the Department of Justice pursuant
- 13 to Section 26225, 27875, 27920, 27966, or 29830.
- 14 (D) Dealers' records of sales of firearms.
- 15 (E) Reports provided pursuant to Article 1 (commencing with
- 16 Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6, or
- 17 pursuant to any provision listed in subdivision (a) of Section 16585.

1 (F) Forms provided pursuant to Section 12084, as that section
2 read prior to being repealed on January 1, 2006.

3 (G) Reports provided pursuant to Article 1 (commencing with
4 Section 26700) and Article 2 (commencing with Section 26800)
5 of Chapter 2 of Division 6 of Title 4 of Part 6, that are not dealers'
6 records of sales of firearms.

7 (H) Information provided pursuant to Section 28255.

8 (I) Reports of stolen, lost, found, pledged, or pawned property
9 in any city or county of this state.

10 (2) The Attorney General shall, upon proper application therefor,
11 furnish the information to the officers referred to in Section 11105.

12 (b) (1) The Attorney General shall permanently keep and
13 properly file and maintain all information reported to the
14 Department of Justice pursuant to the following provisions as to
15 firearms and maintain a registry thereof:

16 (A) Article 1 (commencing with Section 26700) and Article 2
17 (commencing with Section 26800) of Chapter 2 of Division 6 of
18 Title 4 of Part 6.

19 (B) Article 1 (commencing with Section 27500) of Chapter 4
20 of Division 6 of Title 4 of Part 6.

21 (C) Chapter 5 (commencing with Section 28050) of Division 6
22 of Title 4 of Part 6.

23 (D) Any provision listed in subdivision (a) of Section 16585.

24 (E) Former Section 12084.

25 (F) Section 28255.

26 (G) Any other law.

27 (2) The registry shall consist of all of the following:

28 (A) The name, address, identification of, place of birth (state
29 or country), complete telephone number, occupation, sex,
30 description, and all legal names and aliases ever used by the owner
31 or person being loaned the particular firearm as listed on the
32 information provided to the department on the Dealers' Record of
33 Sale, the Law Enforcement Firearms Transfer (LEFT), as defined
34 in former Section 12084, or reports made to the department
35 pursuant to any provision listed in subdivision (a) of Section 16585,
36 Section 28255, or any other law.

37 (B) The name and address of, and other information about, any
38 person (whether a dealer or a private party) from whom the owner
39 acquired or the person being loaned the particular firearm and
40 when the firearm was acquired or loaned as listed on the

1 information provided to the department on the Dealers' Record of
2 Sale, the LEFT, or reports made to the department pursuant to any
3 provision listed in subdivision (a) of Section 16585 or any other
4 law.

5 (C) Any waiting period exemption applicable to the transaction
6 which resulted in the owner of or the person being loaned the
7 particular firearm acquiring or being loaned that firearm.

8 (D) The manufacturer's name if stamped on the firearm, model
9 name or number if stamped on the firearm, and, if applicable, the
10 serial number, other number (if more than one serial number is
11 stamped on the firearm), caliber, type of firearm, if the firearm is
12 new or used, barrel length, and color of the firearm, or, if the
13 firearm is not a handgun and does not have a serial number or any
14 identification number or mark assigned to it, that shall be noted.

15 (E) *The name of the person and his or her spouse or domestic*
16 *partner if the firearm is registered to both individuals. The*
17 *department shall modify its registration forms to the extent*
18 *necessary, if it has not already done so, so that both spouses or*
19 *both domestic partners may register as the owners of the firearm.*
20 *This subparagraph shall not require the department to change the*
21 *Dealer's Record of Sale form.*

22 (3) Information in the registry referred to in this subdivision
23 shall, upon proper application therefor, be furnished to the officers
24 referred to in Section 11105, to a city attorney prosecuting a civil
25 action, solely for use in prosecuting that civil action and not for
26 any other purpose, or to the person listed in the registry as the
27 owner or person who is listed as being loaned the particular firearm.

28 (4) If any person is listed in the registry as the owner of a firearm
29 through a Dealers' Record of Sale prior to 1979, and the person
30 listed in the registry requests by letter that the Attorney General
31 store and keep the record electronically, as well as in the record's
32 existing photographic, photostatic, or nonerasable optically stored
33 form, the Attorney General shall do so within three working days
34 of receipt of the request. The Attorney General shall, in writing,
35 and as soon as practicable, notify the person requesting electronic
36 storage of the record that the request has been honored as required
37 by this paragraph.

38 (c) (1) If the conditions specified in paragraph (2) are met, any
39 officer referred to in paragraphs (1) to (6), inclusive, of subdivision
40 (b) of Section 11105 may disseminate the name of the subject of

1 the record, the number of the firearms listed in the record, and the
2 description of any firearm, including the make, model, and caliber,
3 from the record relating to any firearm's sale, transfer, registration,
4 or license record, or any information reported to the Department
5 of Justice pursuant to any of the following:

6 (A) Section 26225, 27875, or 27920.

7 (B) Article 1 (commencing with Section 26700) and Article 2
8 (commencing with Section 26800) of Chapter 2 of Division 6 of
9 Title 4 of Part 6.

10 (C) Article 1 (commencing with Section 27500) of Chapter 4
11 of Division 6 of Title 4 of Part 6.

12 (D) Chapter 5 (commencing with Section 28050) of Division
13 6 of Title 4 of Part 6.

14 (E) Article 2 (commencing with Section 28150) of Chapter 6
15 of Division 6 of Title 4 of Part 6.

16 (F) Article 5 (commencing with Section 30900) of Chapter 2
17 of Division 10 of Title 4 of Part 6.

18 (G) Chapter 2 (commencing with Section 33850) of Division
19 11 of Title 4 of Part 6.

20 (H) Any provision listed in subdivision (a) of Section 16585.

21 (2) Information may be disseminated pursuant to paragraph (1)
22 only if all of the following conditions are satisfied:

23 (A) The subject of the record has been arraigned for a crime in
24 which the victim is a person described in ~~subdivisions (a) to (f),~~
25 ~~inclusive,~~ of Section 6211 of the Family Code and is being
26 prosecuted or is serving a sentence for the crime, or the subject of
27 the record is the subject of an emergency protective order, a
28 temporary restraining order, or an order after hearing, which is in
29 effect and has been issued by a family court under the Domestic
30 Violence Protection Act set forth in Division 10 (commencing
31 with Section 6200) of the Family Code.

32 (B) The information is disseminated only to the victim of the
33 crime or to the person who has obtained the emergency protective
34 order, the temporary restraining order, or the order after hearing
35 issued by the family court.

36 (C) Whenever a law enforcement officer disseminates the
37 information authorized by this subdivision, that officer or another
38 officer assigned to the case shall immediately provide the victim
39 of the crime with a "Victims of Domestic Violence" card, as

1 specified in subparagraph (H) of paragraph (9) of subdivision (c)
2 of Section 13701.

3 (3) The victim or person to whom information is disseminated
4 pursuant to this subdivision may disclose it as he or she deems
5 necessary to protect himself or herself or another person from
6 bodily harm by the person who is the subject of the record.

7 SEC. 2. Section 17060 of the Penal Code is amended to read:

8 17060. (a) As used in Section 25135, “residence” means any
9 structure intended or used for human habitation, including, but not
10 limited to, houses, condominiums, rooms, motels, hotels,
11 time-shares, and recreational or other vehicles where human
12 habitation occurs.

13 (b) *As used in Section 27882, “residence” means any structure*
14 *intended or used for human habitation, including, but not limited*
15 *to, houses, condominiums, rooms, motels, hotels, and time-shares,*
16 *but does not include a recreational or other vehicle where human*
17 *habitation occurs.*

18 SEC. 3. Section 27880 of the Penal Code is amended to read:

19 27880. Section 27545 does not apply to the loan of a firearm
20 between persons who are personally known to each other, if all of
21 the following requirements are satisfied:

22 (a) The loan is infrequent, as defined in Section 16730.

23 (b) The loan is for any lawful purpose.

24 (c) The loan does not exceed ~~30~~ 10 days in duration.

25 (d) Until January 1, 2015, if the firearm is a handgun, the
26 individual being loaned the firearm shall have a valid handgun
27 safety certificate. Commencing January 1, 2015, for any firearm,
28 the individual being loaned the firearm shall have a valid firearm
29 safety certificate, except that in the case of a handgun, an unexpired
30 handgun safety certificate may be used.

31 SEC. 4. Section 27881 is added to the Penal Code, to read:

32 27881. Section 27545 does not apply to the loan of a firearm
33 provided all of the following are met:

34 (a) If the firearm being loaned is a handgun or semiautomatic
35 center fire rifle, the handgun or rifle is registered to the person
36 making the loan pursuant to Section 11106.

37 (b) The loan occurs within the lender’s place of residence or
38 private property, which is not zoned for commercial, retail, or
39 industrial activity.

1 (c) The firearm at all times stays within the lender's place of
2 residence or private property, which is not zoned for commercial,
3 retail, or industrial activity.

4 (d) The individual receiving the firearm is not prohibited by
5 state or federal law from possessing, receiving, owning, or
6 purchasing a firearm.

7 (e) The individual receiving the firearm is 18 years of age or
8 older.

9 (f) The individual receiving the firearm has a valid firearm safety
10 certificate, except that if the firearm being loaned is a handgun,
11 the individual may instead have an unexpired handgun safety
12 certificate.

13 SEC. 5. Section 27882 is added to the Penal Code, to read:

14 27882. Section 27545 does not apply to the loan of a firearm
15 provided all of the following are met:

16 (a) If the firearm being loaned is a handgun or semiautomatic
17 center fire rifle, the handgun or rifle is registered to the person
18 making the loan pursuant to Section 11106.

19 (b) The firearm being loaned is stored in the receiver's place of
20 residence or in an enclosed structure on the receiver's private
21 property, which is not zoned for commercial, retail, or industrial
22 activity.

23 (c) The firearm at all times stays within the receiver's place of
24 residence or in an enclosed structure on the receiver's private
25 property, which is not zoned for commercial, retail, or industrial
26 activity.

27 (d) The individual receiving the firearm is not prohibited by
28 state or federal law from possessing, receiving, owning, or
29 purchasing a firearm.

30 (e) The individual receiving the firearm is 18 years of age or
31 older.

32 (f) The individual receiving the firearm has a valid firearm safety
33 certificate, except that if the firearm being loaned is a handgun,
34 the individual may instead have an unexpired handgun safety
35 certificate.

36 (g) One of the following applies:

37 (1) The firearm is maintained within a locked container.

38 (2) The firearm is disabled by a firearm safety device.

39 (3) The firearm is maintained within a locked gun safe.

1 (4) The firearm is locked with a locking device, as defined in
2 Section 16860, which has rendered the firearm inoperable.

3 (h) The loan does not exceed 30 days in duration.

4 (i) The loan is made without consideration.

5 (j) There is writing in a format prescribed by the Department
6 of Justice that explains the obligations imposed by this section that
7 is signed by both the party loaning the firearm for storage and the
8 person receiving the firearm.

9 (k) Both parties to the loan have signed copies of the writing
10 required by subdivision (j).

11 SEC. 6. (a) The Legislature finds and declares all of the
12 following:

13 (1) Under current state procedures, the initial acquisition process
14 to acquire a firearm includes, among other requirements, a
15 background check, a Firearm Safety Certificate, and upon
16 completion of the process, registration of that firearm to that person
17 in the Centralized Registry set forth in Section 11106 of the Penal
18 Code.

19 (2) The current background check and registration process
20 allows only one person to initially acquire and be the registered
21 owner of that firearm.

22 (3) The California Constitution provides that property owned
23 before marriage or acquired during marriage by gift, will, or
24 inheritance is separate property.

25 (4) Community property rights are protected through the Due
26 Process Clause and other clauses of the California Constitution.

27 (5) On July 20, 2015, the California Supreme Court in the case
28 *In re Marriage of Davis* (2015) 61 Cal.4th 846 confirmed that
29 Section 760 of the Family Code specifically allows property
30 acquired by the spouses during the marriage not to be treated as
31 community property where otherwise provided by statute.

32 (6) Allowing property acquired by spouses during the marriage
33 not to be treated as community property where otherwise provided
34 by statute was foreshadowed by the decision of the Court of
35 Appeals in *Crosby v. H.L.C. Properties LTD* (2014) 223
36 Cal.App.4th 597, 609, fn. 10.

37 (7) Under current law, a person who is licensed to carry a
38 handgun in public is licensed to carry a specific handgun, and in
39 many jurisdictions licensing authorities license both spouses to
40 carry the same handgun, but in other jurisdictions licenses to carry

1 will not be issued unless the handgun is first registered to the
2 applicant.

3 (8) Because carry license information is reported to the
4 Department of Justice and is required to be included in the
5 Centralized Registry, joint registration is occurring today, albeit
6 under the carry license system.

7 (9) Joint family firearm registration is expressly allowed for
8 assault weapons and .50 BMG rifles.

9 (10) Joint spousal firearm registration exists in Hawaii,
10 Maryland, and New York.

11 (11) Firearms initially constituting separate property may be
12 jointly registered to a spouse via the transmutation process and via
13 the operation of law procedures set forth in subdivision (g) of
14 Section 16990 and paragraph (2) of subdivision (a) of Section
15 27920 of the Penal Code, without being processed through a
16 state-licensed firearms dealer. The clear intent of those provisions
17 is to allow joint spousal registration via that process but not to
18 otherwise permit joint registration. The amendments made to
19 Section 11106 of the Penal Code made by the act that added this
20 section in so far as relevant are designed to effectuate that intent.

21 (12) Also via the operation of law process, separate property of
22 one spouse may be transmuted to another spouse as separate
23 property.

24 (13) Firearms brought into this state by new residents which
25 were acquired outside of this state by such persons when residents
26 of that other state are being allowed to be jointly registered in
27 effect to both spouses pursuant to the procedures set forth in of
28 Section 27560 of the Penal Code, without being processed through
29 a state-licensed firearms dealer. The amendments made to Section
30 11106 of the Penal Code by the act that added this section in so
31 far as relevant are designed to allow that to continue if it is
32 occurring now.

33 (14) The Department of Justice, pursuant to Section 28000 of
34 the Penal Code, allows a person to de-register a firearm if certain
35 conditions are met, including, among other conditions, providing
36 the department with official documentation that the firearm has,
37 in fact, been disposed of. The amendments made to Section 11106
38 of the Penal Code by the act that added this section in so far as
39 relevant are designed to allow that to continue if it is occurring
40 now.

(15) The process of de-registering a firearm by filing a form pursuant to Section 28000 of the Penal Code detailing the disposal of a firearm because the firearm was transferred to another requires submission to the department of a formal department-generated document stating that the firearm was re-registered. If the disposition form is not submitted pursuant to Section 28000 of the Penal Code, then a firearm may in effect be technically listed as being registered to both parties involved in the transfer.

(16) There are legitimate concerns that if joint firearm registration is explicitly allowed by virtue of the amendments made to Section 11106 of the Penal Code by the act that added this section, it may create a number of issues regarding third-party rights when the time comes to dispose of those jointly registered firearms. Those concerns exist now as to jointly registered .50 BMG rifles and assault weapons.

(b) The Attorney General shall prepare and submit to the Legislature on or before January 1, 2018, a report concerning all of the following:

(1) What process is occurring now as to the joint registration of firearms between spouses and registered domestic partners pursuant to the operation of law procedures by virtue of the amendments made to Section 11106 of the Penal Code by the act that added this section.

(2) Any issues that have arisen as to joint family registration of .50 BMG rifles and assault weapons.

(3) The barriers that exist, if any, to joint registration of firearms between spouses and registered domestic partners that are not obviated by the amendments made to Section 11106 of the Penal Code by the act that added this section.

(4) The feasibility and costs of explicitly implementing a joint firearm registration system beyond the provisions of this act made by the amendments made to Section 11106 of the Penal Code by the act that added this section without disrupting the current Dealer Record of Sale system.

(5) The overall costs of creating and maintaining, and the costs to the individuals of using, a joint firearm registration system beyond those changes made by the amendments made to Section 11106 of the Penal Code by the act that added this section.

(6) The effect of an explicit joint firearm registration system on overall efforts by the Department of Justice in terms of information

1 and computerized upgrades that the department is currently
2 undertaking.

3 (7) Recommendations for the disposition of jointly registered
4 firearms that protect public safety, the registrants, and third parties.

5 (8) Proposals for any specific statutory changes necessary to
6 implement the recommendations identified pursuant to paragraph
7 (7), if any.

8 (c) The report required by subdivision (b) shall be submitted
9 pursuant to Section 9795 of the Government Code.

10 (d) It is the intent of the Legislature, if joint firearm registration
11 does not occur pursuant to the amendments made to Section 11106
12 of the Penal Code by the act that added this section, to enact
13 legislation that will go into effect prior to January 1, 2019, to
14 implement an explicit joint firearm registration system in a
15 user-friendly manner that protects public safety and does not
16 complicate the disposition of firearms that are jointly registered.

17 SEC. 7. It is the intent of the Legislature that the Department
18 of Justice make available on its Internet Web site, in an editable
19 public display format, the form referred to in Section 27882 of the
20 Penal Code.

21 SEC. 8. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.